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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. REGINALD DESHAWN MOORE, Defendant and Appellant.	B284327 Los Angeles County Super. Ct. No. NA093030

APPEAL from an order of the Superior Court of Los Angeles County, Tomson T. Ong, Judge. Affirmed.

Dawn S. Mortazavi, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

The trial court found defendant and appellant Reginald Deshawn Moore in violation of his felony probation and sentenced him to state prison. Moore appeals. We affirm.

FACTS AND PROCEDURAL BACKGROUND

In August 2012 the People charged Moore with corporal injury to a cohabitant in violation of Penal Code section 273.5, subdivision (a).[1] According to the probation department report,[2] police arrived at an address on 8th Street in Long Beach where they encountered Dolly S.B.[3] Officers "immediately noticed victim had injuries." Dolly told the officers she and Moore, her boyfriend, "had gotten into an argument" over a watch. (Dolly had "turned in" his watch to pay for repairs to her watch.) Dolly said Moore punched her in the jaw, grabbed her by the shoulders, threw her to the ground, "and began shaking her entire body up and down on the floor." A prosecutor later told the court, "Once she is slammed to the ground, [Moore] is stomping on her face and body with his shoes to the point where he left a shoe mark on her face . . . ."

On August 14, 2012, Moore entered into a plea agreement with the People. Moore pleaded guilty to the charge. On September 4, 2012, in accordance with the plea agreement, the court suspended imposition of sentence, placed Moore on five years formal probation, and ordered him to serve 365 days in the county jail. The court ordered Moore to "cooperate with the probation officer in a plan for completion of [a] 52 week

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1 Statutory references are to the Penal Code.

2 As the case settled before preliminary hearing, we take our facts from the probation department report.

3 We refer to the victim by her first name. (Cal. Rules of Court, rule 8.90(b)(4).)

approved domestic violence counseling program" and to pay victim restitution to Dolly under section 1202.4, subdivision (f), of $6,840. This amount apparently consisted of Dolly's medical bills as well as "a phone that was broken during the incident." After reading Moore all the terms of his probation, the court asked him, "Mr. Moore, do you understand and accept the terms and conditions of your probation?" Moore responded, "Yeah."

In March 2014, about 19 months after the court put him on probation, Moore appeared before the court, apparently as instructed by his probation officer. Moore's counsel told the court Moore "had been enrolled in the classes" and had done 16 but owed the program money. Counsel said Moore's aunt was expecting a refund on her income tax "and she's promised him to give him the money that is required to get the proof of the classes he's done so far." Counsel noted "while the report reads negatively,"[4] "perhaps this really did all stem from the financial aspects of it."

The court asked Moore how he was "paying [his] bills right now." Moore said he was living with his brother and his grandmother was paying for his classes, but "she ha[d] problems of her own, so she [couldn't] help [him] all the time." Moore said he was "looking for a job" and did not contribute any money for rent, food, or transportation. The court asked, "Do you have any income whatsoever?" Moore replied he was "going to go do G.R., but, you know, I got to get that." The court asked, "You haven't done that yet?" Moore said, "Yeah, I haven't done that yet."

The court read aloud from the report, apparently quoting Moore's counselor at the domestic violence program: "The Sutter Group Counseling, page 1 of the report, that counselor at

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[4] The record on appeal does not contain this probation report.

Saddlebrook stated . . . 'We have spoken to Reginald about adhering to his financial agreement. He is not impressed.' " After further discussion, the court told Moore, "So as I'm sure [the public defender] has told you part of what you agreed to was to do this program, the contract that you made with the prosecutor. . . . [¶] I'll leave you on probation because I . . . think you're trying, but understand there comes a time where the program has to get done" or custody will result. The court offered to terminate probation and impose sentence, but Moore declined. The court said, "[Y]ou have a lot to do. . . . You got to finish the program, you got to pay the restitution, you've got to make sure you're reporting to probation. That requires . . . significant effort on your part to get all this done. So it's up to you if you want to stay on probation . . . ."

The court told Moore to "see if you can work out something that is acceptable to your probation officer in terms of getting into a domestic violence program, whether it's the same one or a different one or holding off having to make payments until you get a job. [¶] But something needs to get worked out."

In mid-June 2014 Moore came to court for reinstatement papers. The court said, "I'll give you paperwork to get reinstated in the domestic violence program. I'm glad you came in and that you were dealing with it. Please make sure you stay in the program. Don't miss too many classes and get kicked out for that reason."

In late September 2014 Moore again came to court "asking for re-referral to the domestic violence program." Moore's counsel also told the court Moore wanted to get credit for "life skills" classes he had attended while in custody that had a "domestic violence partial component." The court noted Moore's paperwork from the program stated he had been dismissed. The court asked Moore if he "got back into the class after I gave you permission

to get re-enrolled or reinstated." Moore responded he had been going "back and forth"; his counsel conceded he had done no additional classes. Even though Moore had told the court in July that he was in "good standing" in the class, that was not the case.

The court asked Moore, "Do you understand my frustration?" Moore said, "Yes." The court said, "So since March you've done four classes from what I can tell. You may have done a couple of additional classes. You stopped going, you hadn't been in treatment, all because you have been trying to figure out how many additional classes you needed. [¶] Mr. Moore, go to the domestic violence class, finish the 52 weeks. Okay. That's how many you have to do." The court continued, "[Y]ou should have been making progress, getting closer to the end of your probationary period, you should be done with this class. And instead you have been going back and forth, to and from the classes, you haven't actually done them. [¶] This was [a] five-year grant of probation back in 2012. . . . This was the deal you entered into."

The court noted Moore's G.E.D. and life skills classes in custody were not the same as domestic violence classes. But, the court said, if probation could show the court that the classes Moore did in custody were "the same as an actual D.V.C. class," the court would be willing to give Moore credit. The court concluded, "You've just got to do it, Sir. Just go do it. Stop going back and forth. Just do it. Okay? [¶] So I'm going to give you permission to get back in, reinstated in the domestic violence class." The court warned Moore if he didn't "get this done" he would go back into custody.

Moore was back in court about seven months later. Moore's lawyer said "he's walked in because he would like to have clarification regarding his DVC requirements." Counsel said Moore "tells me he is doing his DV classes" but "[h]e tells me

the court was going to check to see if the court could give him . . . credit" for classes done in custody. Moore did not bring any progress report from the program, but he said he had "12 or 13 more classes left."

The court read to Moore from the reporter's transcript of the September 2014 proceeding. The court said, "I didn't say I was going to do any investigation." The court continued, "It was up to you to talk to probation, and probation could confirm for me that those are DVC classes and I will accept them. We still don't have that confirmation." The court told Moore, "[T]he paperwork that I am seeing does not tell me that it qualifies for [a] domestic violence class. When we say in a court world 'I want you to do a 52-week domestic violence class,' we mean a specific class that meets once a week to talk about those specific issues. . . . [T]here are certain other things that happen in the class in terms of talking to you and having you do whatever the paperwork is for it. [¶] I can't say that's lumped in to the life skill[s] classes, even though I know you're disagreeing with me. [¶] I'm ordering you to finish a full year, 52 classes. You're going to show me proof that you finished 52 classes. That's what I am ordering you to do."

Moore told the court he was going to a different group. Moore said, "I only have 12 classes. I can do that." The court replied, "Great. Get it done."

The parties next appeared before the court on May 26, 2017, more than four years and nine months after Moore had been placed on probation and some three months before his probation was due to expire. A different judge was presiding from the one before whom Moore had appeared in 2014 and 2015. Moore's probation officer prepared a report for the hearing. Probation reported Moore had not completed his domestic violence counseling and had not paid Dolly the court-ordered

victim restitution. Probation stated Moore "was seen by the financial evaluator" in July 2014 but Moore "did not bring any of the items" requested by the evaluator. The probation officer had asked Moore "if he wanted to provide a letter for the court [about] his lack of cooperation with completing counseling and paying restitution to the victim." The report attached the letter Moore had written.[5]

Moore's public defender told the court he had explained to Moore that "it is important for him to cooperate in order to demonstrate to the financial evaluator that he does not have those funds." Counsel asked the court "simply [to] admonish [Moore] and continue . . . him on probation." The court said, "Seems like he blames everybody except himself. This is a domestic violence case." Moore's counsel told the court Moore had a receipt from the program showing an April payment. The court remanded Moore and set June 19, 2017 as the next date. On June 19 Moore's lawyer told the court Moore had been "doing the classes to the best of his ability and paying to the best of his ability to pay for it and his probation officer was not attentive to him." The court set the matter for a probation violation hearing in July 2017.

At the formal hearing on July 31, the prosecutor called Moore's probation officer Roslynd Davis. Davis testified she had been Moore's probation officer since 2012. She said, "He never complied." She continued, "He owes restitution to the victim. He refused to pay. When I asked him to pay he calls her the devil and that she doesn't deserve it." Davis stated Moore had not finished his domestic violence counseling. When asked about it, Moore had told Davis "[h]e doesn't have money." The prosecutor

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[5] The record on appeal does not contain a copy of the letter.

marked as an exhibit the letter Moore had written to the court and given to Davis. The court read the entire letter into the record.

Moore wrote, "In the case concerning me and Dolly Satan Mars,[6] I plead no contest because I wasn't guilty. I did what the law and God allows me to which was to defend myself and in terms of religion to respect my life and protect my life. I never hit anyone. Dolly Satan Mars admitted she was the aggressor. It was her that acted the beast and started the violence. . . . [¶] After I get out of jail I have come to the courthouse including many times, including seeing probation for help to call this injustice out and the whole courthouse told me nothing until 120 were up [*sic*] and then they told me it was too late to get justice. . . . [¶] The reason I missed a few sessions is because I become lost in getting to the library and searching on how to bring this courthouse to justice. . . . [¶] I have done all my classes all I hope to do is get the money so I can get to the credit." Moore also wrote at some length that he was being treated unfairly because of his race.

On cross-examination, Davis testified Moore had completed 35 classes. She said Moore did discuss his financial problems with her. But, Davis said, Moore was "very hostile." She continued, "When you try to speak to Mr. Moore it's always a combative situation. You try to talk to him about getting to other classes and he will tell you it's not his fault for being in jail. It's always back and forth. You try to help him, but he is not listening. He doesn't think he should be on probation."

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[6] While the victim's middle name starts with an "S," suffice it to say it is not "Satan." Nor is her last name "Mars."

Davis testified Moore was unemployed and—according to him—his grandmother supported him. Davis said Moore had made some payments toward victim restitution between December 2012 and November 2014. Davis added Moore did not think the victim "deserve[d] his money." Davis stated Moore had not told her within the past year that he planned to get back into the program.

Moore testified on his own behalf. Moore said he walked to and from class. "Getting back and forth was always a thing." Moore seemed to refer to two counselors by their first names whom he liked. When asked if he attended class regularly, Moore responded, "Yeah, yeah, sometimes I couldn't make it walking that distance all my efforts have gone to that." Moore said he had to pay ahead of time for the classes. Asked if he was working, Moore answered, "No, not really."

The court asked what Moore meant. Moore said he had a "friend" who was "making [him] pay for a car to get everything done easy." Moore continued, "He got in accident [*sic*] with the car and he was still selling it to me. He only charged me $1,000. He gave it to me recently, the car and he gave me $260 for the class."

Moore's counsel asked him why he had completed only 35 of the 52 required classes. Moore's answer is difficult to understand, but he seemed to say he could not pass "background check[s]" because of his felony conviction. Moore denied ever having told his probation officer that he would not pay victim restitution to Dolly.

On cross-examination Moore said he wrote the letter to the court "out of anger." When asked if he had recently bought a car, he answered, "Yeah, my grandmother helped me out with that." Moore admitted referring to the victim as "Satan."

The court heard arguments from counsel. The prosecutor noted Moore had had five years to comply with the terms of his probation. She said, "It does appear that he has had opportunities to obtain money, but none of it has gone into this because as the court can see from his statement he was angry about the fact that he was convicted in this case to begin with. Referring to the victim as Satan is a clear indication of how he feels about the entire thing."

The prosecutor continued, "He is not going to comply. As the court can see from the photographs this was a pretty severe beating that the defendant inflicted. He stomped on the victim's face. He stomped on her side. He punched her and all kinds of severe conduct. It was done in front of her children, who were both quite young at the time. I think he has had his opportunity. He did not go to state prison initially. He did not go when Judge Laesecke found him in violation and told him to go. I think he has run out of opportunities to complete his probation."

Defense counsel argued Moore had enrolled in the classes and "complete[d] most of [them]." Counsel said it was "not unusual for [his] clients to fall out of the programs because of financial reasons." Defense counsel continued, "The fact that he spent money on some things that were not related to these things is not enough to prove a violation. He still gets to take care of basic needs and necessities." Counsel said Moore had not been arrested while on probation and had reported more than 30 times to his probation officer.

The court found by a preponderance of the evidence that Moore had violated his probation. The court noted both the judge who took Moore's plea and sentenced him and the judge who supervised his probation for two years had given him every opportunity. The court recited the chronology of Moore's interaction with the court at progress reports and hearings.

The court stated more than two years had passed "with no contact on what he was doing with the classes. He did not ask for help. He went and bought a car and decided to live his life."

The court based its decision "on the credibility of the witnesses and the demeanor of the witnesses." The court took "judicial notice of the entire file." The court terminated Moore's probation and sentenced him to the midterm of three years.

DISCUSSION

The standard of proof required to revoke probation is a preponderance of the evidence to support the violation. (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.) The court has "very broad discretion in determining whether a probationer has violated probation." (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.)

We review the trial court's decision to revoke Moore's probation for substantial evidence, according great deference to the trial court's decision. (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.) We also do not reweigh the evidence or determine the credibility of witnesses on appeal. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206-1207.) " '[T]he power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination . . . .' " (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.)

Section 1203.097, subdivision (a)(6) requires "[s]uccessful completion of a batterer's program" as a mandatory term of probation in a domestic violence case. The statute provides, "The defendant shall attend consecutive weekly sessions . . . and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months." (§ 1203.097, subd. (a)(6).) The Penal Code lists specific

mandatory components of the batterer's program, its "goal [being] to stop domestic violence." (§ 1203.097, subd. (c)(1)(A)–(P).) The statute provides, "An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee." (§ 1203.097, subd. (c)(1)(P).)

Moore contends he "cooperated with probation to the best of his abilities" and the court was required—but failed—to conduct a "financial determination hearing." The record belies Moore's first contention and the law does not support his second.

Moore never asked the court for an ability to pay hearing. Instead, he repeatedly told the judge he was going to reenroll and finish his classes. When probation directed Moore to meet with the financial evaluator, he refused or failed to bring any of the documents or materials he was supposed to bring. His own lawyer urged him to cooperate with the financial evaluator and probation. Moore chose to buy a car: that $1,000 was more than enough to finish his remaining required classes. For the two years before the probation set-on in 2017, Moore made no progress on his classes and never asked the court, the public defender, or his probation officer for help.

The two cases on which Moore relies are distinguishable. Both involved different statutes. *People v. Trask* (2010) 191 Cal.App.4th 387 was a deferred entry of judgment case. The statute at issue permitted termination of diversion only for specified reasons. Inability to pay program fees was not one of them. *People v. Self* (1991) 233 Cal.App.3d 414 involved a failure to pay victim restitution under section 1203.2, subdivision (a). As the Attorney General notes, that statute does not prohibit a court from revoking probation for violating

the conditions of probation, including the requirement to complete a batterer's program complying with all of the statutory requirements.[7]

Moore not only did not complete his program within 18 months, as the Penal Code requires—he did not complete it at all. After five years, he remained unrepentant, calling the woman he had hit and stomped on "Satan." He made no showing that he ever asked his program for a reduced fee or a "deferred payment schedule"; he never asked the court for a fee reduction or waiver order or any other relief; and there is no evidence that he followed his own lawyer's advice to cooperate in demonstrating an inability to pay program fees. We see no abuse of discretion to justify disturbing the trial court's revocation of Moore's probation.

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[7] Moore also argues the court should have accepted the probation department's suggestion of extending his probation after a suitable amount of custody time instead of sentencing him. Both Moore and the probation department apparently are unaware that section 1203.1, subdivision (a) limits Moore's probationary term to five years. Accordingly, the court had no authority to extend Moore's probation. Its choices were to permit probation to expire even though Moore had not completed the mandatory counseling, or to terminate probation and sentence Moore.

DISPOSITION

We affirm the trial court's order finding Reginald Deshawn Moore in violation of his probation and imposing sentence.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

MURILLO, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.